SUPREME COURT, U.S.
FILED
96 975 DEC 16 1996
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

JOHN CROSETTO,

Petitioner,

vs.

STATE BAR OF WISCONSIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AMEDEO GRECO
Counsel of Record for Petitioner
6406 Masthead Drive
Madison, Wisconsin 53705
(608) 233-0017

89pp

QUESTIONS PRESENTED

1. Whether an entity, which claims to be an "arm of the state," is entitled to sovereign immunity under the Eleventh Amendment in federal court after dropping that defense and when a money judgment against it will not be paid out of the state treasury.

2. Whether, after a Circuit Court raises a sovereign immunity defense *sua sponte* and after a defendant on a remand raises that defense, a party under Fed. R. Civ. P. 15 can amend a complaint by naming nominal defendants to preserve subject matter jurisdiction.

3. Whether, under *Keller,* a unified bar can:
   a. require its members to first submit their constitutional claims to final and binding arbitration before they can be heard in federal court;
   b. give preclusive effect to any arbitration awards issued under such an arbitration plan.

PARTIES TO THE PROCEEDING

Petitioner John Crosetto is licensed to practice law in the State of Wisconsin. He was a plaintiff in the District Court and appellant in the Court of Appeals. Respondent State Bar of Wisconsin is a unified bar association headquartered in Madison, Wisconsin. It was a defendant in the District Court and an appellee in the Court of Appeals.

None of the parties to this proceeding is a corporation.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	vii-x
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS	2
STATEMENT OF THE CASE	2
A. Introduction and Summary	2
B. Factual Background	4
1. LAWPAC	4
2. Respondent's Record-Keeping Practices	5
3. Respondent's Dues Reduction-Arbitration Plan	6
4. Respondent's Role	6
5. Respondent's Prior Representation That It Is Not A Governmental Entity	6
6. Contrary Indicators of Immunity	8
C. Course of Proceedings Below	9

TABLE OF CONTENTS (continued)

		Page
1.	Nature of the Case	9
2.	Respondent's Representations That It Would Not Raise A Sovereign Immunity Defense	10
3.	Petitioner's Challenges To The Dues Reduction-Arbitration Plan	11
4.	Before the Remand	11
5.	After the Remand	14
REASONS FOR GRANTING THE WRIT		15
I.	There Is A Direct Conflict Between The Seventh Circuit Below And The First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, And Eleventh Circuits On Whether A Claimed State Entity Is Entitled To Sovereign Immunity Under The Eleventh Amendment When A Money Judgment Against It Does Not Come From The State Treasury	17
II.	This Court Has Granted Certiorari And Now Has Pending Before It A Similar Sovereign Immunity Question	23
III.	Fairness And Justice Dictate That Petitioner's Prevailing Party Claim Should Not Be Dismissed Because Of The Seventh Circuit's Decision Which Prohibited Petitioner From Adding Nominal Defendants To The Complaint To Counter Respondent's Lack Of Subject Matter Jurisdiction Claim	24

TABLE OF CONTENTS (continued) Page

IV. The Courts Below Clearly Erred In Not Addressing The Merits Of Petitioner's Claims Which Were First Raised In 1992 And Which Are Covered By The Pretrial Order 27

CONCLUSION 30

INDEX TO APPENDIX

Appendix A
Judgment Order of United States Court of Appeals for the Seventh Circuit Dated September 17, 1996 ..... 1a-2a

Appendix B
Order of the United States District Court for the Northern District of Illinois, Western Division, [sic] Dated December 15, 1995 ..... 3a-16a

Appendix C
Order of the United States District Court for the Northern District of Illinois, Western Division, [sic] Dated May 1, 1995 ..... 17a-21a

Appendix D
Judgment of the United States Court of Appeals for the Seventh Circuit Dated December 20, 1993 22a-40a

Appendix E
Constitutional and Statutory Provisions 41a-42a

TABLE OF CONTENTS (continued) Page

Appendix F
Wisconsin Supreme Court Rule 10.03(5)(b) (1992) 43a-44a

Appendix G
State Bar Bylaw Article I, Section 5 (1992) 45a-47a

TABLE OF AUTHORITIES

Cases: *Page*

Christy v. Pennsylvania Turnpike Com'n, 54 F.3d. 1140 (3rd Cir. 1993), cert. denied, 116 S.Ct. 340 (1995) 19

Crosetto v. Heffernan, 771 F. Supp., 224 (N.D. Ill. 1990 11

Crosetto v. Heffernan, 810 F. Supp., 966 (N.D. Ill. 1992) 11

Crosetto v. State Bar of Wisconsin, 12 F.3d. 1396 (7th Cir. 1993), rehearing and suggestion for rehearing denied, (1994), cert. denied, ___ U.S. ___, 114 S. Ct. 2138, 128 L.Ed. 2d. 867 (1994) ..... *passim*

Delahoussaye v. City of New Iberia, 937 F.2d. 144 (5th Cir. 1991) 20

Doe v. Lawrence Livermore Nat. Laboratory, 65 F.3d. 771 (9th Cir. 1995), cert. granted, 64 U.S.L.W. 3837 (U.S. June 17, 1996) (No. 95-1694) 21, 23

Esparza v. Valdez, 862 F.2d. 788 (10th Cir. 1988) ... 18

Ex parte Young, 209 U.S. 123 (1908) 14

Felder v. Casey, 487 U.S. 131 (1988) 27

Foman v. Davis, 371 U.S. 178 (1962) 24, 25

Gray v. Laws, 51 F.3d. 426 (4th Cir. 1995) 19

TABLE OF AUTHORITIES—Continued

Page

Hadley v. North Arkansas Community Technical College, 76 F.3d. 1437 (8th Cir. 1996), petition for cert. filed, 65 U.S.L.W. 3054 (U.S. June 24, 1996) (No. 95-2060) 20

Harter v. C. D. Vernon, 1996 U.S.L.W. 673953 (4th Cir.) (Nov. 22, 1996) 19, 20

Hess v. Port Auth. Trans-Hudson Corp., 115 S.Ct. 394 (1994) ..... *passim*

Hutsell v. Sayre, 5 F.3d. 996 (6th Cir. 1993) cert. denied, 114 S.Ct. 1071 (1994) 20

Ingraham v. Wright, 498 F.2d. 248, 252 (5th Cir. 1974) 26

Jackson v. Georgia Dept. of Transp., 16 F.3d. 1573 (11th Cir. 1994) 21

Keller v. State Bar of California, 496 U.S. 1 (1990) .. 27, 30

Mancuso v. New York State Thruway Authority, 86 F.3d. 239 (2nd Cir. 1996), cert. denied, (Nov. 18, 1996) (No. 96-381) 18, 19

McDonald v. Board of Miss. Levee Comm'rs, 832 F.2d. 901 (5th Cir. 1987) 20

Metcalf & Eddy v. P.R. Aqueduct and Sewer Authority, 991 F.2d. 935 (1st Cir. 1993) 18

Mullaney v. Anderson, 342 U.S. 415 (1952) 26

TABLE OF AUTHORITIES—Continued

	Page
Patsy v. Florida Board of Regents, 457 U.S. 496 (1982)	27
Ruehman v. Sheahan, 34 F.3d. 525 (7th Cir. 1994)	17
Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114 (1996)	*passim*
Teachers v. Hudson, 475 U.S. 292 (1986)	27
Thiel v. State Bar of Wisconsin, 94 F.3d. 399, (7th Cir. 1996)	14-15, 17-18

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS

U.S. Const. art. 1	22
U.S. Const. amend I	2
U.S. Const. amend XI	*passim*
U.S. Const. amend XIV	2
28 U.S.C. § 1254 (1)	2
42 U.S.C. § 1983	9
28 U.S.C. § 1343(a)(3)	9
Wisconsin Supreme Court Rule 10.03(5)(b) (1992)	*passim*
State Bar Bylaw Article I, Section 5 (1992)	11, 27

TABLE OF AUTHORITIES—Continued *Page*

MISCELLANEOUS

Stevens, Is Justice Irrelevant , 87 Nw. U.L. Rev. 1121, 1124-1125 (1993) 15

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

No. 96 ___

John Crosetto, Petitioner

vs.

State Bar of Wisconsin, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner John Crosetto respectfully petitions this Court for a writ of certiorari to review a judgment of the United States Court of Appeals for the Seventh Circuit in the above-captioned case.

OPINIONS BELOW

The opinion of the Court of Appeals is unreported. App. at 1a-2a.[1] The District Court's decisions granting summary judgment (App. at 3a-16a) and denying Petitioner's motion to supplement the complaint (App. at 17a-21a) are unreported. The prior opinion of the Court of Appeals ordering the remand is reported at 12 F.3d. 1396. App. 22a-40a.

JURISDICTION

The judgment of the Court of Appeals was entered on September 17, 1996. App. 1a-2a.[1] This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS

The pertinent provisions of the United States Constitution are the First, Eleventh, and Fourteenth Amendments. The pertinent provision of the Wisconsin Supreme Court's Rules is SCR 10.03(5)(b). The pertinent statutory provision is 42 U.S.C. § 1983. All of these provisions are set forth in App. at 41a-47a.

STATEMENT OF THE CASE

A. Introduction And Summary

This case is a civil rights action brought by Petitioner John Crosetto ("Crosetto") in 1988 against Respondent State Bar of Wisconsin ("State Bar") and others. The suit charges that Respondent has violated his rights under the First and Fourteenth Amendments by, inter alia, forcing him to

---

1All references to "App." are to the Appendix contained in the Petition For Writ Of Certiorari.

financially support certain bar activities; by failing to maintain constitutionally mandated records; and by maintaining an unconstitutional dues reduction-arbitration plan. His action initially named as co-defendants Stephen L. Smay ("Smay"), Respondent's Executive Director, and the then Justices of the Wisconsin Supreme Court. The District Court dismissed the latter as parties and it subsequently entered summary judgment in favor of Respondent and Smay. The Seventh Circuit affirmed the dismissals of Smay and the members of the Wisconsin Supreme Court, but remanded to the District Court the question of whether Respondent is a state entity and entitled to sovereign immunity, a question it raised sua sponte.

Petitioner subsequently filed a Petition For Writ Of Certiorari with this Court which was denied.

On the remand, Respondent moved for summary judgment on the ground that it is a state entity and entitled to sovereign immunity under the Eleventh Amendment to the United States Constitution and that, as a result, the federal court lacked subject matter jurisdiction.

To counter Respondent's claim of lack of subject matter jurisdiction, Petitioner moved to supplement the complaint by, inter alia, naming as nominal defendants the individual members of Respondent's Board of Governors. The supplemental complaint also challenged Respondent's dues reduction-arbitration plan.

The District Court denied Petitioner's motion to supplement the complaint. It later granted Respondent's motion for summary judgment on the basis that it is a state entity and thus entitled to sovereign immunity.

The Seventh Circuit affirmed the District Court's rulings on the grounds that Petitioner's motion to supplement the complaint was barred by the terms of its mandate and that

Respondent's state agency status had just been recently resolved by a different Circuit Court panel in other pending litigation involving Respondent where it was found to be a state agency. App. 1a-2a.

B. Factual Background

Petitioner Crosetto practices law in the State of Wisconsin and is required to belong to Respondent and to financially support all of its legislative, political, and other bar activities not covered by a dues reduction plan.[2] Respondent is a unified bar which maintains its offices in Madison, Wisconsin.

1. LAWPAC

Petitioner and all other State Bar members at one time were required to financially support LAWPAC—a political action committee operated out of Respondent's offices and headed by one of its employees—which gave financial support to political candidates. Respondent admits that part of Petitioner's dues money was spent on LAWPAC before Respondent severed its relationship. It is impossible to determine how much of Petitioner's dues money was spent on LAWPAC because of Respondent's failure to maintain complete and accurate records for all of LAWPAC's expenses. R. 510, ¶s 21, 27-28.[3]

---

[2]Petitioner is not challenging the constitutionality of Wisconsin's mandatory bar requirement. Petitioner initially raised, but subsequently dropped, such a challenge. Hence, that issue is not before this Court.

[3]All references to "R. 510" are to Plaintiffs' Statement Of Undisputed Facts In Opposition To Defendant's Second Motion For Summary Judgment. R. 510 refers to the specific parts of the record supporting the facts asserted therein.

A special study committee created by the Wisconsin Supreme Court found that "The State Bar created LAWPAC . . .;" that even after its governing structure was changed, LAWPAC "as a practical matter" still used the State Bar's mailing address and its files still were kept in the State Bar's offices; that a State Bar employee suggested to Respondent's Board of Governors that "The expedient of renting a separate postal box for LAWPAC would tend to conceal the relationship of the Bar and LAWPAC . . .;" that a separate postal box was then created; and that "throughout its existence, [a State Bar employee] has played the principal role in LAWPAC's activities." (R. 510) ¶ 22. The State Bar employee involved with LAWPAC admits that all of these findings are correct. (R. 510) ¶23.

2. Respondent's Record-Keeping Practices

Respondent's employees before the commencement of this litigation were not required to fill in and file their time reports—which are used to determine how much money Respondent spends on given bar activities—until the eleventh of the following month; i.e., from 11 to 42 days after the fact. Because of the inadequacy of such records, Respondent's employees were unable to ascertain how much of Petitioner's mandatory dues money was spent on particular bar activities when they were asked to do so at their depositions. (R. 510) ¶s 5-10.

Respondent changed its time-keeping and record-keeping procedures several months after Petitioner in 1990 amended the complaint to raise this issue (R. 127). Hence, time reports are now filled out daily and filed once a week. Respondent also changed its auditing practices in 1993 or 1994 after Petitioner raised this issue and claimed that Respondent's expenses were not being properly audited. Respondent admits firing one of its employees in part because of the issues raised in this litigation. (R. 510) ¶s 16-20.

3. Respondent's Dues Reduction-Arbitration Plan

Petitioner Crosetto and other State Bar members from July 1, 1992, to the present have been subjected to Respondent's dues reduction-arbitration plan which: 1), forces members to arbitrate constitutional challenges to the plan before they can proceed in federal court; and 2), gives preclusive effect to any arbitration awards issued thereunder. (R. 510) ¶ 47.

4. Respondent's Role

Respondent admits that it was not acting as an agent of the Wisconsin Supreme Court when it created LAWPAC, its political action committee, and that it did not rely on any rules, regulations, decisions, or orders of the Wisconsin Supreme Court when it established its record-keeping, time-keeping, and accounting practices. (R. 510) ¶s 14, 30.

Respondent adopted its current Dues Reduction and Arbitration Policy without prior approval from the Wisconsin Supreme Court. Furthermore, the Wisconsin Supreme Court from July 1, 1992, to the present has never reviewed any of Respondent's expenses to determine whether they are constitutionally permissible. (R. 510) ¶s 44, 45.

5. Respondent's Prior Representation That It Is Not A Governmental Entity

At the time Petitioner filed his complaint in May, 1988, Respondent was involved in a dispute with the United States Postal Service's Office of Classification and Rate Administration ("Postal Service") over revocation of Respondent's special bulk mailing privileges which enable Respondent to send mail at a cheaper rate. The Postal Service initially revoked the permit because it cannot be given to any governmental agency.

Respondent successfully challenged the revocation by stating in a June 22, 1989, letter from its attorney: "The bar is not a governmental entity." (Emphasis in original.) (R. 509) That letter referred to one of Respondent's earlier submissions to the Postal Service which "cited a decision of the United States Supreme Court which explicitly held that the bar was not a governmental entity" and which further stated: "the Supreme Court noted that the Bar was an independent organization, and not simply an arm of the Wisconsin Supreme Court."

The letter also stated that "the Supreme Court had therefore explicitly held that the Wisconsin bar was not an arm of the court but a 'quasipublic' entity." The letter added:

> "The Bar's pleading went on to characterize the numerous operational indicia that underscore the Bar's independence from the Wisconsin Supreme Court and every other state governmental entity: (1) the Governors of the State Bar are elected by members of the state bar rather than being appointed by state officials or the legislature; (2) the organization's budget is approved by its governors and not by any state official; (3) the organization does not receive any funding from the state treasury; and (4) bar employees do not participate in any of the benefit plans offered by the State of Wisconsin to its employees."

Respondent prevailed and retained its bulk mailing privileges on the basis that it is not a governmental entity.

6. Contrary Indicators of Immunity

There are contrary indicators relating to whether Respondent is an arm of the state.

On the one hand, the Wisconsin Supreme Court has ruled on various bar related issues and it has supervised some of its activities. Such indicators are related in the District Court's decision granting summary judgment. (App. 7a-9a).

On the other hand, Respondent operates as an independent entity with little or no state control over its activities. Thus, it conveys real estate and disposes of personal property in its own name; it holds and disburses its own funds; it is given no appropriations from the state's general revenues; it has the independent power to borrow money, to buy and sell bonds, and to incur other evidence of indebtedness; and its own debts and expenses are satisfied out of bar dues and revenues from its various services. (R.510) ¶ 66.

Respondent's employees are not classified as state employees and Respondent does not follow any of the various personnel rules and regulations governing state employment even though it has never been told by the Wisconsin Supreme Court that it is free to disregard them. (R. 510) ¶s 63-64.

Respondent is autonomous in fiscal and budgetary matters and thus does not follow any of the procedures mandated for all other state entities, again even though it has never been told by the Wisconsin Supreme Court that it is free to disregard those procedures. (R. 510) ¶s 60-62.

Other indicia showing that Respondent does not operate as a state entity are too numerous to be recited here. They are more fully set forth in Petitioner's Statement of Undisputed Facts In Opposition to Defendant's Second Motion for Summary Judgment. (R. 510) ¶s 60-63.

C. Course of Proceedings Below

1. Nature of the Case

Petitioner Crosetto and several other State Bar members filed their action under 42 U.S.C. § 1983 on May 19, 1988, against Respondent State Bar, its Executive Director, and the individual members of the Wisconsin Supreme Court. (Complaint, R. 2)[4] The District Court's jurisdiction was based on 28 U.S.C. § 1343(a)(3).

As amended, the complaint (R127) alleges that Respondent has violated Petitioner's rights under the First and Fourteenth Amendments to the United States Constitution by, inter alia, forcing him to financially support LAWPAC, its political action committee; by forcing him to support other bar activities which are not constitutionally mandated; by maintaining an unconstitutional dues reduction-arbitration plan; by taking away his property and liberty without due process of law; and by not maintaining constitutionally mandated time-keeping, record-keeping, and auditing practices.

As a remedy, Petitioner seeks declaratory and injunctive relief and legal money damages of about $1,500-$2,000.[5] Petitioner has asked for a jury trial regarding all genuine issues of disputed fact.

---

[4]Those other plaintiffs are no longer parties to this litigation. For purposes of clarity, the singular term "Petitioner" is used herein even though several other plaintiffs originally were part of this action.

[5]Petitioner earlier requested class certification on behalf of himself and all other similarly situated State Bar members and compensatory and punitive damages on their behalf. All money claims on behalf of any other State Bar members were dropped before the District Court and Petitioner has dropped his request for class certification.

Petitioner also contends that he is a prevailing party because of his success in bringing about major improvements in Respondent's time-keeping, record-keeping, and auditing practices—a success which is evidenced by Respondent's admission that it fired one of its employees in part because of the abuses uncovered in this litigation. (R. 510) ¶ 17.

The action was filed in the United States District Court for the Western District of Wisconsin where it was assigned to Federal Judge Barbara B. Crabb. She subsequently recused herself *sua sponte* because of her membership in the State Bar. R. 86. Federal Judge Stanley J. Roszkowski of the Northern District of Illinois was then assigned to the case by special designation. R. 87. This case has always remained a Western District of Wisconsin case.[6]

2. Respondent's Representations That It Would Not Raise A Sovereign Immunity Defense

Respondent on three separate occasions has represented that it would not assert a sovereign immunity defense. See Respondent's Response To Plaintiffs' Statement Of Material Undisputed Facts (R. 467) ¶s 6, 7 and 8.

It first did so at an August 1989 deposition when one of its attorneys stated: "To my understanding as I sit here today with respect to this lawsuit, and only this lawsuit, the issue of state agency will not be raised." One of Respondent's other attorneys represented at a February 1991 status conference before the Magistrate that Respondent would not raise this defense at any time in this litigation. The same attorney in a

---

6The captions of the District Court's Orders (App. 3a, 17a) incorrectly describe this action as being before the "United States District Court for the Northern District of Illinois, Western Division." The correct title should read before the "United States District Court for the Western District of Wisconsin."

February 1991 letter to Petitioner's counsel stated: "We do not believe that the State Bar's status as a state agency has any relevance to this litigation." *Id.*

3. Petitioner's Challenges To The Dues Reduction-Arbitration Plan

Petitioner and Respondent in August 1991 entered into a Pretrial Order which stated, inter alia, that one of the disputed questions of law to be answered by the Court was: "Is the dues reduction plan set forth in SCR 10.03(5), and State Bar Bylaws adopted in response to that rule, constitutional on its face and/or as applied." R324, Tab B-2, ¶ 3.

Pursuant thereto, Petitioner in 1992 moved for injunctive and declaratory relief on the grounds that SCR 10.03(5) (App. 43a-44a), was unconstitutional, facially and as applied, because Respondent's dues reduction-arbitration plan, inter alia: (1), imposes an unlawful exhaustion requirement which requires State Bar members to submit their constitutional claims to arbitration against their will, and (2), contains an unlawful preclusion requirement.[7] (R. 374-375)

4. Before the Remand

The District Court dismissed the individual Justices of the Wisconsin Supreme Court as named Defendants on November 16, 1990, pursuant to their Motion to Dismiss. 771 F. Supp. 224 (1990).

The magistrate on August 24, 1992, addressed some, but not all, of Petitioner's constitutional challenges to SCR 10.03(5). 810 F. Supp. 966 (N.D. Ill. 1992). He ruled that some of the rules and bylaws were facially valid and that Petitioner's

---

7Petitioner also asserted that the plan is unconstitutional on other grounds. Petitioner is not raising those challenges in this proceeding.

constitutional challenge to the fee calculation for fiscal year 1993 was not ripe because the calculation had not been reviewed by an impartial arbitrator. *Id.* at 37-44. The magistrate did not identify or rule on the merits on Petitioner's other constitutional challenges. His Report and Recommendation also stated that summary judgment should be granted on behalf of Respondent and Executive Director Smay.

The District Court on October 22, 1992, denied Petitioner's motion for declaratory relief on the ground that it was "moot." R. 384. At the same time, it adopted the Magistrate's Report and Recommendation and granted summary judgment.

On appeal, Petitioner asserted before the Seventh Circuit, as he did before the District Court, that he was entitled to injunctive and declaratory relief because Respondent's July 1, 1992, dues reduction plan was unconstitutional for the reasons set forth at p. 11, ante. Respondent maintained that the plan was constitutional and stated that it had recently been amended, effective July 1, 1993, so that "it more closely follows the language of *Keller.*"[8]

The Seventh Circuit denied injunctive and declaratory relief without addressing these specific claims. It also affirmed the dismissals of Smay and the Justices of the Wisconsin Supreme Court, but raised sua sponte the question of whether Respondent is a state entity and entitled to sovereign immunity under the Eleventh Amendment. App. at 32a, n. 10.

It remanded that issue and stated that the District Court "should consider the extent of control exercised over the Bar by the Wisconsin Supreme Court or the state at large" and that it also should decide whether "the Bar was acting as the agent of

---

8Brief of Defendants-Appellees State Bar of Wisconsin and Stephen L. Smay to the Court of Appeals for the Seventh Circuit, pp. 32-33, n. 16.

the Court when it promulgated the rules in question." App. at 33a.

It added: "Also relevant is whether a judgment against the State Bar would be ultimately be paid by the state treasury." *Id.* But, it cautioned: "We hasten to note, however, that even when there is no risk to the state treasury, the state is immune when sued in its own name" and that:

> "Thus, even without any impact on the state's treasury, the district court must consider whether the Bar occupies the position of a public agency or official, necessarily forbidding any suit in federal court." App. at 34a.

The Seventh Circuit also suggested that the District Court consider whether Respondent waived any sovereign immunity defense when its attorneys repeatedly stated that this defense would not be raised. App. at 34a, n. 11.

Petitioner then filed a Petition For Writ Of Certiorari with this Court seeking review over (1), the dismissal of Petitioner's motion for declaratory relief; (2), the dismissal of the Wisconsin Supreme Court Justices as named defendants; (3), whether Respondent's Executive Director was entitled to qualified immunity; and (4), whether Respondent was barred from raising a sovereign immunity defense. Petition, p. i.

Respondent opposed the petition on the grounds that the Seventh Circuit had properly: (1) remanded this matter for a determination of whether subject matter jurisdiction extends to claims against Respondent; (2), determined that Executive Director Smay was entitled to qualified immunity; and (3), dismissed Petitioner's motion for declaratory relief. Brief in Opposition, p. i.

The Petition For A Writ Of Certiorari was denied. 114 S.Ct. 2138 (1994).

5. After the Remand

Respondent on August 25, 1994, moved for summary judgment on the ground, inter alia, that it is a state agency; that it is entitled to sovereign immunity; and that the federal courts thus lack subject matter jurisdiction. (R. 434)

In response to that defense, Petitioner on February 28, 1995, moved to supplement the complaint by naming as nominal defendants the individual members of Respondent's Board of Governors—who were then nominal defendants in *Thiel v. State Bar of Wisconsin*, 94 F.3d. 399 (7th Cir. 1996)—and by seeking equitable relief against them pursuant to *Ex parte Young*, 209 U.S. 123 (1908). (R. 458)

The proposed supplemental complaint also claimed that Respondent's dues reduction-arbitration plan was unconstitutional for the reasons set forth at p. 11, ante. (R. 458) ¶s 191-192.

The proposed complaint also stated that Petitioner would drop all money claims if his constitutional challenges were addressed on the merits and if his prevailing party claims were submitted to a jury. (R. 458) ¶ G.

The District Court on May 1, 1995, denied the motion on the grounds that it would add 46 new parties (i.e., the members of Respondent's Board of Governors); that it would add a "completely new claim that is dissimilar to the issues remaining, thus expanding the scope of this lawsuit;" that this would require "significant additional preparation on the part of the defendant, and would impose a greater burden on this court; and that Petitioner's challenges to the dues reduction plan "were not appropriately a part of this lawsuit." App. 19a-20a. It therefore stated that Petitioner should intervene in *Thiel*, which was then pending in the Western District of Wisconsin, if he wanted his constitutional challenges heard, 20a. In doing

so, the District Court did not address, or even mention, that Petitioner would drop all money claims if the merits of his constitutional challenges were addressed.

Petitioner on March 3, 1995, moved to strike Respondent's sovereign immunity defense and he on March 13, 1995, moved for partial summary judgment on whether Respondent had waived that defense after its attorneys repeatedly had dropped it. (R. 460, 462)

The District Court on December 15, 1995, granted Respondent's motion for summary judgment on the ground that it is a state entity and hence entitled to sovereign immunity, an issue it found had not been waived. App. 3a-16a.

The Seventh Circuit on September 17, 1996, summarily affirmed the District Court's dismissal. App. 1a-2a It ruled that Respondent just recently had been found to be a state entity by another Circuit Court panel in *Thiel.* It affirmed the dismissal of Petitioner's complaint amendment because: "Amendment would have been inconsistent with our mandate, which required the resolution of one specific issue." App. 2a.

REASONS FOR GRANTING THE WRIT

"Is Justice Irrelevant "

Justice Stevens has posed this question in addressing the doctrine governing sovereign immunity under the Eleventh Amendment. Stevens, Is Justice Irrelevant Nw. U.L. Rev. 1121, 1124-1125 (1993).

That also is the same question posed here because Petitioner has spent over eight years in the federal courts, during which time one procedural barrier after another has been erected to avoid ruling on the merits of his claims and his status as a prevailing party.

Respondent's resurrected sovereign immunity defense is the last and, without this Court's review, final barrier. Respondent has raised this defense even after stating on three separate occasions that it would not do so and even after representing to the Postal Service: "The bar is not a governmental entity." (Emphasis in original.)

Petitioner on the remand tried to respond to this resurrected defense by naming as nominal defendants the individual members of Respondent's Board of Governors in order to counter Respondent's claim that the federal courts lack subject matter jurisdiction. The Court of Appeals, however, ruled that Petitioner's motion to that effect was barred under the terms of its mandate. App. 2a.

Its ruling runs roughshod over Rule 1's command that the Federal Rules of Civil Procedure are to be construed "to secure the just, speedy, and inexpensive determination of every action." Kicking Petitioner out of court after eight years and telling him that he must start anew if he wants his legal rights vindicated at this late date—merely because nominal defendants have not been added to this action—represents the very antithesis of this command and it invites comparison to *Jarndyce v. Jarndyce* (Charles Dickens, Bleak House (1853)).

Its ruling also is manifestly unjust because it prevents Petitioner from being declared a prevailing party because of his hard earned success in getting Respondent to improve its woeful record-keeping, time-keeping and auditing practices—one of the central issues in this litigation. Indeed, Respondent itself has acknowledged Petitioner's success by firing one of its employees in part because of the abuses uncovered here.

But, the issues before this Court are far broader than Petitioner's individual complaint. The constitutional issues raised herein—first raised in 1992 before the District Court and

then in 1993 before the Seventh Circuit—affect all of Wisconsin's other 18,000 or so attorneys. In addition, the Seventh Circuit's decision that payment from the state treasury is no longer a critical criteria in resolving sovereign immunity questions is now being applied in all other cases arising within its jurisdiction.

For the reasons stated below, Petitioner respectfully submits that this Court should grant review and correct this situation. Such a review also would show that justice is relevant.

I. There Is A Direct Conflict Between The Seventh Circuit Below And The First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, And Eleventh Circuits On Whether A Claimed State Entity Is Entitled To Sovereign Immunity When A Judgment Against It Does Not Come From The State Treasury

The Circuit Courts are deeply split on whether payment from a state's treasury remains a critical criteria in determining whether an entity is entitled to sovereign immunity under the Eleventh Amendment.

The minority view is taken by the Seventh Circuit which ruled here that sovereign immunity can be granted "even when there is no risk to the state treasury . . .." App. at 33a. The District Court on the remand thus ruled that because Respondent is an agency of the state under other criteria, "This court need not consider whether a judgment against the Bar would impact the state treasury." App. 9a-10a. The Seventh Circuit summarily affirmed the District Court's ruling. App. 1a-2a.

The Seventh Circuit in *Ruehman v. Sheahan*, 34 F.3d. 525, 528 (7th Cir. 1994) reiterated: "A drain on the state treasury is not a necessary condition to an affirmative answer" as to whether an entity is entitled to sovereign immunity under the Eleventh Amendment. It upheld that principle in *Thiel* when it

stated that its analysis was supported by *Seminole Tribe of Florida v. Florida*, 116 S.Ct. 1114, 1124 (1996). The court added:

> "we held in *Crosetto* that the effect on the state treasury was the least important of the three factors, and would be irrelevant if the first two [which relate to control and agency] weigh in favor of Eleventh Amendment immunity." 94 F.3d. at 401.

The Tenth Circuit in *Esparza v. Valdez*, 862 F.2d. 788, 795 (10th Cir. 1988), also ruled:

> "even if we could find little or no fiscal impact on the state from plaintiffs' suits, the financial impact on the state does not appear to be the predominant factor in Eleventh Amendment analysis."

These rulings are in direct conflict with the majority of other Circuit Courts which have addressed this issue.

The First Circuit in *Metcalf & Eddy v. P. R. Aqueduct and Sewer Authority*, 991 F.2d. 935, 939-940, (1st Cir. 1993), set forth a sevenfold test for determining whether sovereign immunity can be granted, with payment from a state's treasury being the single most important criteria.

The Second Circuit in *Mancuso v. New York State Thruway Authority*, 86 F.3d. 239, 293 (2nd Cir. 1996), cert. denied, (Nov. 18, 1996) (No. 96-381) held that payment from a state treasury was one of the six (6) criteria used to determine whether sovereign immunity can be granted and added: "The jurisprudence over how to apply the arm-of-the-state doctrine is, at best, confused." *Id.* at 293. The court referred to *Hess v. Port Auth. Trans-Hudson Corp.*, 115 S.Ct. 394, (1994), and ruled: "Although *Hess* involved a bi-state entity, we nevertheless believe that it is the proper starting place for our Eleventh Amendment inquiry in this case." *Id.* at 293. It added:

> "The parties' suggestion to the contrary notwithstanding, the Supreme Court's decision in *Seminole Tribe v. Florida*, ___ U.S. ___, 116 S. Ct. 1114, 134 L.Ed. 252 (1996), does not alter our analysis here." *Id.* at 293, n. 1.

The Third Circuit uses a three-pronged test for determining if sovereign immunity can be granted, one of which centers on whether:

> "payment of the judgment would come from the state (this includes three considerations: whether the payment will come from the state's treasury, whether the agency has sufficient funds to satisfy the judgment, and whether the sovereign has immunized itself from responsibility for the agency's debts)." *Christy v. Pennsylvania Turnpike Com'n*, 54 F.3d.1140, 1144 (3rd Cir. 1995), cert. denied, 116 S. Ct. 340 (1995).

The Fourth Circuit in *Gray v. Laws*, 51 F.3d. 426, 433 (4th Cir. 1995), reviewed *Hess* and held:

> "a determination that the state treasury will be liable for a particular judgment is largely, if not wholly, dispositive of entitlement to Eleventh Amendment immunity in the single state context, as it is in the multistate context." 115 S.Ct. at 394."

More recently, the Fourth Circuit ruled in *Harter v. C. D. Vernon*, 1996 U.S.L.W. 673953 (4th Cir.), (Nov. 22, 1996), that "the most important factor is whether the state treasury will pay any resulting judgment" and that:

> "*Hess* makes clear that the impact on the state treasury is generally determinative when the state will not have to pay for a judgment." The court rejected Appellant's claim that *Seminole Tribe of Florida* dictates a contrary result because:

> "*Seminole Tribe* held Congress has no power under Article III of the Constitution to abrogate the Eleventh Amendment immunity of a state; the case had nothing to do with who the Eleventh Amendment applies to."

The Fifth Circuit has ruled: "the most significant factor in assessing an entity's status is whether a judgment against it will be paid with state funds." *McDonald v. Board of Miss. Levee Comm'rs.*, 832 F.2d. 901, 907 (5th Cir. 1987). See also *Delahoussaye v. City of New Iberia*, 937 F.2d. 144, 149-150 (5th Cir. 1991).

The Sixth Circuit has ruled: "[T]he most important factor in resolving this question, however, is whether any monetary judgment would be paid out of the state treasury." *Hutsell v. Sayre*, 5 F.3d. 996, 999 (6th Cir. 1993), cert. denied, 114 S.Ct. 1071 (1994).

The Eighth Circuit in *Hadley v. North Ark. Community Technical College*, 76 F.3d. 1437, 1439, (8th Cir. 1996), petition for cert. filed, 65 U.S.L.W. 3054 (U.S. June 24, 1996) (95-2060) reviewed *Hess* and concluded:

> "we adhere to the test that we instructed the district court to apply on remand, which requires that we 'examine the particular entity in question and its powers and characteristics as created by state law to determine whether the suit is in reality a suit against the state. Courts typically look at the degree of local autonomy and control and most importantly whether the funds to pay any award will be derived from the state treasury'." (Citations omitted.)

The Ninth Circuit applies a five-part test which centers on "whether a money judgment would be satisfied out of state funds," as it has ruled: "State liability for money judgment is the single most important factor in determining whether an entity is an arm of the state." *Doe v. Lawrence Livermore Nat.*

Laboratory, 65 F.3d. 771, 774 (9th Cir. 1995), cert. granted, 64 U.S.L.W. 3837 (U.S. June 17, 1996) (95-1694).

The Eleventh Circuit in *Jackson v. Georgia Dept. of Transp.*, 16 F.3d. 1573, 1577, (11th Cir. 1994), cert. denied, 115 S.Ct. 320 (1994), ruled that the "general test" for determining sovereign immunity:

> "is whether the relief sought against the nominal defendant would in fact operate against the state, especially by imposing liability damages that must be paid out of the public fisc."

The court added: "Moreover, this court has previously reasoned that Eleventh Amendment immunity applies only if the judgment must, under all circumstances, be paid out of state funds." (Emphasis in original). *Id.* at 1577.

This direct conflict between the Seventh Circuit and the majority of Circuit Courts centers on a fundamental principle of federalism which goes to the very core of the Eleventh Amendment; i.e., whether a claimed state entity is entitled to sovereign immunity when a money judgment against it will not come out of the state treasury.

Petitioner believes that the majority view adopted by the Circuit Courts is in accord with *Hess* where a majority of this Court (Justices Blackmun, Stevens, Souter, Kennedy, and Ginsburg, J.J.) ruled that sovereign immunity turns on respect for a state's sovereignty and whether a judgment will come out of the state treasury. The majority stated "the impetus for the Eleventh Amendment" was "the prevention of federal court judgments that must be paid out of a state treasury" and that: "Courts of Appeals have recognized the vulnerability of the State's purse as the most salient factor in Eleventh Amendment determinations (citations omitted)." 115 S.Ct. at 404.

It thus ruled that the proper focus is on losses and debts and that:

> "If the expenditures of the enterprise exceed receipts, is the State in fact obligated to bear and pay the resulting indebtedness of the enterprise When the answer is 'No'—both legally and practically—then the Eleventh Amendment's core concern is not implicated." *Id.*, at 406.

That is the same question presented here. And, like *Hess*, the answer is "No" because a money judgment of about $1,500-$2,000 most certainly will not come out of the state's general treasury. Respondent has a $500,000 line of credit with its own bank; about $217,000 in bonds which it purchased; about $350,594 reserved for its building fund; and unrestricted cash assets of about $115,194. (R. 127) ¶ 44. Hence, Respondent has more than enough assets under its own name to pay for such a small judgment.

The Seventh Circuit here cited *Seminole Tribe of Florida* in support of its contrary view. App. at 2a. There, the majority (Rehnquist, C.J., O'Connor, Scalia, Kennedy and Thomas, J.J.) stated: "the relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment." 116 S.Ct. at 1124. The majority added: "The Eleventh Amendment does not exist solely to prevent federal court judgments that must be paid out of a State's treasury," *Id.* at 1124. The Seventh Circuit apparently assumes these statements mean that it no longer is necessary to determine whether a judgment will come out of the state treasury.

However, that conclusion does not necessarily follow. *Seminole Tribe of Florida* centered on the Indian Commerce Clause, U.S. Const. art. 1, § 8, C1.3, and Congress' ability to regulate it. Hence, the majority there never had to decide whether *Hess*, which turned on the Compact Clause, should be overruled and whether payment from the state treasury remains

a needed criteria in determining whether sovereign immunity can be granted.

Only this Court, then, can clarify how *Hess* and *Seminole Tribe of Florida* are to be interpreted when read together.

Review thus should be granted so that this important question—which goes to the core of the Eleventh Amendment—can be answered and thereby bring about the end of the Circuit Court split which presently exists.[9]

II. This Court Has Granted Certiorari And Now Has Pending Before It A Similar Sovereign Immunity Question

The need for review is further shown by this Court's grant of certiorari and holding of oral argument on December 2, 1996, in *The Regents of the University of California, et al., v. John Doe, et al.*, No. 95-1694, which centers on whether an otherwise "arm of the state" loses its sovereign immunity if a monetary judgment is paid by the federal government or other third party, as opposed to being paid out of the state treasury.

The facts here are not exactly the same because there is a dispute whether Respondent is a governmental agency (it after all has admitted that it is not) and because there is no legal liability on the part of the State if it is not. In addition, this case does not involve possible reimbursement from some outside source such as the federal government. Furthermore, that case arises in a higher education context and the Court's decision may be limited to those facts. Hence, there is no guarantee that the Court's decision there will automatically be applied here.

9Petitioner maintains that the District Court erred in finding that Respondent had not waived its sovereign immunity defense and that it is an arm of the state. If review is granted, Petitioner will argue these points in greater detail.

Nevertheless, the two cases are closely connected regarding the fundamental issue of federalism raised in both proceedings; i.e., whether sovereign immunity can be granted under the Eleventh Amendment if a money judgment does not come out of the state treasury.

This Court therefore should grant review here, just as it has granted review there.

III. Fairness And Justice Dictate That Petitioner's Prevailing Party Claim Should Not Be Dismissed Because Of The Seventh Circuit's Decision Which Prohibited Petitioner From Adding Nominal Defendants To The Complaint To Counter Respondent's Lack Of Subject Matter Jurisdiction Claim

The Seventh Circuit ruled that Petitioner was prohibited on the remand from amending (or supplementing) the complaint because: "Amendment would have been inconsistent with our mandate which required the resolution of one specific issue." App. 2a.[10]

This flat-out, ironclad prohibition on any complaint amendment to counter Respondent's resurrected sovereign immunity defense, which it initially dropped in 1989, is contrary to *Foman v. Davis* 371 U.S. 178, 182 (1962) which held:

> "outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."

10The Court also stated that the District Court did not abuse its discretion in denying the amendment because it was precluded under its mandate. App. at 2a. However, since the Seventh Circuit ruled that its mandate prohibited any such amendment, the District Court had no such discretion in the first place.

That is the exact situation here because the Seventh Circuit, with no explanation whatsoever, precluded Petitioner from having the merits of his claims addressed only because of the technicality of not having the individual members of Respondent's Board of Governors named as nominal defendants. Those members were nominal parties in *Thiel*, a matter over which judicial notice can be taken because the Certificate of Interest filed in that case lists them all. Furthermore, their addition as parties would not entail any additional discovery[11] or expose them to any financial risk (Petitioner only seeks equitable relief against them). Their addition as parties thus is a routine, ministerial task.

Hence, "It is too late in the day . . ." for "decisions on the merits to be avoided on the basis of such mere technicalities" because:

> "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Foman v. Davis*, 371 U.S. at 181. (citation omitted)

Here, there was no "misstep" by Petitioner's counsel since he reasonably relied on Respondent's repeated representations between 1989-1994, set forth at pp. 10-11, ante, that it would not raise a sovereign immunity defense and that the federal courts had subject matter jurisdiction. That is why Petitioner in 1995 moved for such an amendment only after Respondent in 1994 resurrected this defense and moved for summary judgment on that basis.

11Petitioner has repeatedly stated that this record is fully complete regarding the issues in dispute and that he would not conduct any further discovery if his amendment were to be granted.

The motion also was aimed at ensuring that the federal courts retain subject matter jurisdiction (which Respondent never disputed between 1989-1994) over whether Petitioner is a prevailing party because of his success in bringing about major improvements in Respondent's sorry record-keeping, time-keeping, and auditing practices.

That is why Petitioner has asked that he be allowed to name nominal defendants to at least carry forward this part of his case even if his other request for equitable relief is denied. See Plaintiffs-Appellants' Brief to the Court of Appeals at p. 27, n. 10.

The situation here is almost identical to *Mullaney v. Anderson*, 342 U.S. 415, 417 (1952), which held that it was proper to add parties to counter a defendant's belated claim that proper parties had not been joined because:

> To dismiss the present petition and require the new plaintiffs to start over in the District Court would entail needless waste and runs counter to effective judicial administration--the more so since, with the silent concurrence of the defendant, the original plaintiffs were deemed proper parties below. Rule 21 will rarely come into play at this stage of a litigation. We grant the motion in view of the special circumstances before us.

Similar "special circumstances" most certainly exist here since Respondent between 1989-1994 never claimed that proper parties had not been joined for purposes of subject matter jurisdiction, an issue it ceded over and over again throughout that time.

The Seventh Circuit's refusal to allow such a necessary amendment is also contrary to *Ingraham v. Wright*, 498 F.2d. 248, 252 (5th Cir. 1994) where, under like circumstances, the court ruled that "fairness and efficient judicial administration

justify the addition of the individual school board members as parties . . .."

Accordingly, review is needed to correct the manifest injustice caused by the Seventh Circuit's ruling.

IV. The Courts Below Clearly Erred In Not Addressing The Merits Of Petitioner's Claims Which Were First Raised In 1992 And Which Are Covered By The Pretrial Order

Petitioner maintains that by virtue of *Keller v. State Bar of California*, 496 U.S. 1 (1990), Respondent is clearly prohibited under 42 U.S.C. 1983 from insisting that Petitioner must exhaust state remedies by first presenting his constitutional challenges to arbitration before they can be heard in federal court. *Felder v. Casey*, 487 U.S. 131 (1988); *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982).

The plan also is unconstitutional under *Keller* because it contains an unlawful preclusion requirement contrary to *Teachers v. Hudson*, 475 U.S. 292, 307, n. 1 (1996).

These challenges are covered by the Pretrial Order which asks: "Is the dues reduction plan set forth in SCR 10.03(5) and State Bar Bylaws adopted in response to that rule, constitutional on its face and/or as applied." (R. 324) Tab B-2, ¶ 3.

Pursuant thereto, Petitioner in 1992 moved for injunctive and declaratory relief before the District Court on the grounds, inter alia, that Respondent's dues reduction, arbitration plan, which was established under SCR 10.03(5), was unconstitutional, facially and as applied, for these reasons. (R. 375)

The District Court therefore clearly erred when it stated that the complaint amendment represented a "completely new claim

that is dissimilar to the issues remaining, thus expanding the scope of this lawsuit." App. 19a-20a.

Its error can best be seen by simply comparing Petitioner's verbatim 1992 claims before the District Court with his verbatim 1995 amendment. Such a comparison reveals the following:

Petitioner's 1992 Memorandum In Support Of Plaintiffs's Objections To The Magistrate's Report and Recommendation (R. 375) (pp. 12-13), stated that the dues reduction-arbitration plan is unconstitutional because:	Petitioner's 1995 Amendment (R. 458), ¶s 190-191, states that "the State Bar's current dues reduction plan which was amended effective July 1, 1993, is constitutionally defective . . . because:
"1. Defendants have failed to meet their burden of proof that all of their chargeable activities are justified by compelling state interests which cannot be achieved through alternative and less restrictive means.	Defendants have failed to meet their burden of proving that each chargeable activity used in establishing the size of its dues reduction is justified by compelling state interests which cannot be supported by alternative and less restrictive means.
2. Defendants have failed to meet their burden of proof under *Keller, supra,* that all of their chargeable expenses are 'germane' to either regulating the legal profession or improving the delivery of legal services.	[The plan] does not follow the 'guiding standard' set forth in *Keller* . . . (i.e., that chargeable expenses must relate to either regulating the legal profession or improving the delivery of legal services.)

3. It gives preclusive effect to any arbitration award issued under its procedures.	It gives preclusive effect to any arbitration awards issued thereunder.
. . .	
The plan is also unconstitutional because of its unconstitutional exhaustion requirement. For the law is clear: Civil rights claimants proceeding under Section 1983 cannot be forced to first avail themselves of state administrative remedies before bringing their action in federal court.	7. It forces State Bar members to go to arbitration before they can bring any of their constitutional claims in federal court.
. . .	
it failed to warn that objectors seeking arbitration are expected to waive any de novo review of the arbitrator's award because of its preclusive effect . . ."	It fails to warn prospective State Bar objectors requesting arbitration that by proceeding under Section 788, Wis. Stats., they may be waiving their right to obtain de novo review of any such award.
. . .	

This comparison establishes that Petitioner's pending constitutional challenges have been part of this litigation since 1992 and that their resolution on the merits would not expand its scope by one iota.

Petitioner in this proceeding, however, is only asking for a determination relating to those parts of Respondent's plan relating to arbitration. Those other challenges are not before the Court.

Review therefore is needed to vindicate the rights established under *Keller* and the rights of Wisconsin's approximately other 18,000 attorneys who have been subjected to these requirements since July 1, 1992.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted.

AMEDEO GRECO
Attorney for Petitioner
6406 Masthead Drive
Madison, Wisconsin 53705
(608) 233-0017

DECEMBER 14, 1996